

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 23, 2003

Agenda ID #2740
Adjudicatory

TO: PARTIES OF RECORD IN CASE 03-06-029

This is the draft decision of Administrative Law Judge (ALJ) Walker. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 9/23/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Stewart Valley Homeowners Association,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

Case 03-06-029
(Filed June 24, 2003)**OPINION DISMISSING COMPLAINT****1. Summary of Facts**

Complainant represents a small community of 10 homes and 39 undeveloped lots in eastern California on the border between California and Nevada that is without landline telephone service. It seeks an order requiring SBC California (formerly Pacific Bell) to provide telephone service to the community.¹ While cellular telephone service is available in the area, the complaint alleges that cellular reception is spotty.

SBC California responds that Complainant is in an unfiled telephone service territory, and that the closest SBC California telephone facilities

¹ The complaint also seeks an order requiring SBC Nevada to provide the service, but this Commission lacks jurisdiction over SBC service in Nevada.

are 20 miles southwest of this community. SBC California states that it has advised Complainant that it has no plans to file for service in this area.

On July 24, 2003, SBC California moved to dismiss the complaint on the grounds that (1) the Commission cannot require a utility to expand its service into unfiled areas in which it has not dedicated itself (*Houchen v. Pacific Bell* (1997) 70 CPUC 2d 567), and (2) Complainant has failed to state an act or thing done or omitted to be done by a public utility in violation of any law, order or rule of this Commission (Rule 9 of the Rules of Practice and Procedure). SBC California states that it has sent Complainant copies of all decisions it cites in support of its motion to dismiss.

By Administrative Law Judge (ALJ) Ruling dated August 8, 2003, Complainant was invited to respond to the motion to dismiss, to state the legal underpinnings of its request for a Commission order, and to rebut the legal authorities cited by SBC California in its motion. By letter dated August 20, 2003, Complainant argues that telephone service could be extended from nearby SBC Nevada facilities. It states that its power supply derives from Nevada facilities transferred by agreement at stateline by Southern California Edison Company. The Commission would entertain an application by SBC California to enter into a similar agreement with SBC Nevada if service of that nature were feasible, but no such agreement is before us.

2. Discussion

The gravamen of the complaint before us is SBC California's refusal to provide telephone service to individuals who reside in an unfiled service territory in California. On this matter, it is well settled that the Commission cannot compel a telephone utility to extend service to an unfiled territory unless the utility is willing to serve such extended area. (*Houchen v. Pacific Bell, supra.*)

In the absence of an enabling statute, the Commission cannot require utility management to expand the utility's service into areas in which the utility has not dedicated itself. (*Hollywood Chamber of Commerce v. Railroad Commission* (1923) 192 Cal. 307 (Commission lacks authority to order Los Angeles Railroad Corporation to extend certain streetcar lines into previously unserved territory.)) To order a utility to undertake a service different from that which it has chosen to dedicate service is an improper use of the Commission's police power. (*See, Pacific Telephone & Telegraph v. Public Utilities Commission* (1950) 34 Cal. 2d 822, 829; *Greyhound Lines, Inc. v. Public Utilities Commission* (1968) 68 Cal. 2d 406, 415-416.)

Based on these authorities, it is clear that the complaint seeks relief that this Commission is not empowered to provide. Moreover, the complaint fails to allege that SBC California violated any rule of law or that it has violated an order or rule of this Commission.

Accordingly, the complaint must be dismissed. (*See, e.g., Young v. Pacific Bell* (1996) 67 CPUC 2d 634, 637.)

3. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on _____.

4. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. SBC California is a telephone public utility within the control and regulation of this Commission.

2. Complainant represents a small community of 10 homes and 39 undeveloped lots in an area of eastern California on the California-Nevada border.

3. Complainant is in an unfiled telephone service territory.

4. SBC California is unwilling to extend its service territory to serve Complainant.

Conclusions of Law

1. The Commission has no jurisdiction to assign an area to a public utility, thereby extending the utility's service territory, unless the utility is willing to serve such extended area.

2. The complaint fails to state a cause of action for which the Commission has jurisdiction to issue a remedy.

3. The complaint fails to allege that SBC California violated any rule of law or that it has violated an order or rule of this Commission.

4. Absent any issue of law or fact, no public hearing is necessary.

O R D E R

IT IS ORDERED that:

1. SBC California's motion to dismiss this complaint is granted.

2. Case 03-06-029 is closed.

This order is effective today.

Dated _____, at San Francisco, California.